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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 BRIAN BORENSTEIN,

8 Plaintiff(s),

9 v.

10 EMERALD SUITES,

11 Defendant(s).

Case No. 2:17-CV-1341 JCM (CWH)

ORDER

12
13 Presently before the court is Magistrate Judge Hoffman's report and recommendation
14 ("R&R"). (ECF No. 4). No objections have been filed, and the deadline for filing objections has
15 since passed.

16 **I. Facts**

17 On May 11, 2017, *pro se* plaintiff Brian Borenstein filed an application to proceed *in forma*
18 *pauperis* along with numerous case-initiating documents. (ECF Nos. 1, 2). On May 15, plaintiff
19 filed a motion to stay eviction. (ECF No. 3). On May 17, 2017, Magistrate Judge Hoffman issued
20 the instant R&R. (ECF No. 4).

21 **II. Legal Standard**

22 This court "may accept, reject, or modify, in whole or in part, the findings or
23 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects
24 to a magistrate judge's report and recommendation, then the court is required to "make a de novo
25 determination of those portions of the [report and recommendation] to which objection is made."
26 28 U.S.C. § 636(b)(1).

27 Where a party fails to object, however, the court is not required to conduct "any review at
28 all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149

1 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a
2 magistrate judge's report and recommendation where no objections have been filed. *See United*
3 *States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
4 employed by the district court when reviewing a report and recommendation to which no
5 objections were made).

6 Nevertheless, this court finds it appropriate to engage in a *de novo* review to determine
7 whether to adopt the recommendation of the magistrate judge.

8 A court may dismiss a complaint for "failure to state a claim upon which relief can be
9 granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain
10 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell*
11 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

12 In the R&R, Magistrate Judge Hoffman noted that plaintiff has not filed a formal
13 complaint. (ECF No. 4). Magistrate Judge Hoffman found that plaintiff's filings, even when
14 liberally construed, do not state a cause of action. *Id.* Further, Magistrate Judge Hoffman noted
15 that plaintiff's filings do not explain why a federal court would have jurisdiction over the action.
16 *Id.*

17 Upon reviewing the recommendation and underlying briefs, the court finds that good cause
18 appears to adopt the magistrate judge's findings. The filings do not offer any detail regarding the
19 eviction or why it was unlawful. (*See* ECF No. 5). Further, the filings do not demonstrate why
20 the court possesses jurisdiction over the action. *See id.* The plaintiff has thus failed to state a claim
21 upon which relief may be granted. *See Twombly*, 550 U.S. at 555.

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge
24 Hoffman's report and recommendation (ECF No. 4) be, and the same hereby is, ADOPTED in its
25 entirety.

26 IT IS FURTHER ORDERED that plaintiff's complaint (ECF No. 5) be, and the same
27 hereby is, DISMISSED without prejudice.

1 IT IS FURTHER ORDERED that plaintiff has thirty (30) days from the date of this order
2 to file an amended complaint. Failure to file an amended complaint (or request an extension for
3 leave to file) within thirty (30) days will result in dismissal of the action.

4 IT IS FURTHER ORDERED that plaintiff's motion to stay eviction (ECF No. 3) be, and
5 the same hereby is, DENIED without prejudice.

6 DATED August 31, 2017.

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UNITED STATES DISTRICT JUDGE